

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY SPADE,

Plaintiff, No. CIV S-03-1041 PAN

vs.

JO ANNE B. BARNHART,  
Commissioner of Social Security, ORDER

Defendant.

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Based on 42 U.S.C. § 406(b), counsel for plaintiff in the above-entitled action seeks an award of attorney fees in the amount of \$7,987.56 for 30.65 hours of professional time devoted to the representation of plaintiff before this court. Counsel concedes that this amount should be offset in the amount of \$4,000.00 for fees previously awarded under EAJA.

42 U.S.C. § 406(b)(1)(A) provides, in relevant part:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.

Rather than being paid by the government, fees under the Social Security Act are awarded out of

1 the claimant’s disability benefits. Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 1991),  
2 receded from on other grounds, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).  
3 However, the 25 percent statutory maximum fee is not an automatic entitlement; the court also  
4 must ensure that the requested fee is reasonable. Gisbrecht v. Barnhart, 535 U.S. 789, 808-09  
5 (2002) (“We hold that § 406(b) does not displace contingent-fee agreements within the statutory  
6 ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those  
7 agreements.”). “Within the 25 percent boundary … the attorney for the successful claimant must  
8 show that the fee sought is reasonable for the services rendered.” Id. at 807.

9 Counsel seeks fees for 30.65 hours. Based on the quality of counsel's  
10 representation and the results achieved in this case, the undersigned finds the amount of hours  
11 expended to be reasonable. The hourly rate of \$260.61 is also reasonable. Accordingly, the  
12 undersigned will recommend that the motion for attorney fees be granted.

13                   Accordingly, IT IS HEREBY ORDERED that plaintiff's counsel is awarded  
14 \$7,987.56 in attorney fees pursuant to 28 U.S.C. § 406, to be offset in the amount of \$4,000.00  
15 previously awarded under EAJA.

16 | DATED: May 30, 2006.

John J. Morsel  
UNITED STATES MAGISTRATE JUDGE

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